

1 Steven S. Kane, Esq., SBN: 061670
2 Bonnie E. Kane, Esq., SBN: 167700
2 THE KANE LAW FIRM
3 402 W. Broadway, Suite 2500
4 San Diego, CA 92101
5 Telephone: (619) 236-8700
Facsimile: (619)236-1370
E-mail: skane@thekanelawfirm.com
E-mail: bonnie@thekanelawfirm.com

6 Attorneys for Fire Victim Claimants, including Elizabeth Costa

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

11 || *In re:*

12 || PG&E CORPORATION

13 || -and-

14 PACIFIC GAS AND ELECTRIC
15 COMPANY Debtors

16 | Affects PG&E Corporation

17 Affects Pacific Gas & Electric

18 ■ Affects Both Debtors

19 | *All papers shall be filed in the Lead Case,
No.19-30088 (DM)*

) Case No. 19-30088 (DM)

Case No. 1

Chapter 11 (Lead Case)

(Jointly Administered)

) MOTION TO ALLOW/DEEM TIMELY
) LATE FILING OF PROOF OF CLAIM
) BY ELIZABETH COSTA;
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT
) THEREOF; DECLARATION OF
) ELIZABETH COSTA

) Date: June 7, 2022

) Time: 10:00 a.m.

) Place: **To Be Held Telephonically**

United States

Courtroom 17

450 Golden Gate Avenue

16th Floor

San Francisco, CA

Judge: Honorable Dennis Montali

Objection Deadline: May 31, 2022

The Kane Law Firm respectfully files this motion to allow the late filing of a proof of claim and deem the proof of claim as having been timely filed for the moving party herein, Elizabeth Costa

I.

SUMMARY OF ARGUMENT

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*
5 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on
6 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be
7 considered are as follows:

8 1. The danger of prejudice to the Debtor,

9 2. The length of delay and its potential impact on judicial proceedings,

10 3. The reason for the delay, including whether it was within the reasonable control of the

11 movant, and

12 4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

13 In this case, Elizabeth Costa suffered emotional distress while evacuating from the Camp
14 Fire. Ms. Costa did not file a claim as it was only a few days before the cut off when she learned
15 a claim could be filed. Initially, Ms. Costa did not think that she was eligible to file a claim
16 against PG&E because she did not lose a home or have property damaged or destroyed in the fire.
17 Accordingly, she was misinformed about the claims process and only recently discovered that her
18 damages may be covered under the terms of the Trust agreement established as a result of the
19 Debtors' bankruptcy case.

20 As set forth below, the movant meets all these factors. Indeed, if this motion is *not* granted
21 it is the movant who will suffer substantial prejudice.

II.

PROCEDURAL BACKGROUND

24 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
25 Company (“Debtors”) filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
26 Court entered an order establishing October 21, 2019 (“the bar date”) as the deadline for Fire
27 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
28 extended to December 31, 2019 (“the “extended bar date.”). *See* Dkt. 4872.

III.

FACTUAL BACKGROUND

Elizabeth Costa suffered emotional distress as a result of the Camp Fire. Ms. Costa was misinformed about the claim process until recently. Immediately upon discovering she could present a claim, she retained counsel and has filed a claim. (See Exhibit "A", Claim Number 108233, filed on February 23, 2022).

IV.

ARGUMENT

9 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
10 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

11 (b) Enlargement.

12 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
13 when an act is required or allowed to be done at or within a specified period by
14 these rules or by a notice given thereunder or by order of court, the court for cause
15 shown may at any time in its discretion (1) with or without motion or notice order
the period enlarged if the request therefor is made before the expiration of the
period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

where the failure to act was the result of conscious Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

17 Determination of excusable neglect has been interpreted by the United States Supreme
18 Court as an equitable consideration.

19 "We conclude the determination at bottom an equitable one, taking account of all relevant
20 circumstances surrounding the party's omission. These include. . .the danger of prejudice
21 to the debtor, the length of the delay and its potential impact on judicial proceedings, the
 reason for the delay, including whether it was within the reasonable control of the movant,
 and whether the movant acted in good faith." *Pioneer Inv. Servs v. Brunswick Assoc.*
 Ltd.P'ship, 507 U.S. 380, 395 (1993)

23 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
24 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.

25 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
26 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

27 Further, the delay is not significant. The Trust has only completed determinations (not
28 reconsiderations or appeals) on approximately 50% of all claims. Allowing the late claim will not

1 delay the proceedings.

2 The reason for the delay in filing a claim was that Elizabeth Costa simply misunderstood
3 the process. Excusable neglect will be found even where sophisticated attorneys miss a deadline.
4 *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1006 (9th Cir. 2006). The case for
5 excusable neglect is even more compelling when the mistake was made by an unrepresented
6 layperson. *Id.*

7 Further, Elizabeth Costa acted in good faith. The failure to file was not based on litigation
8 tactics where a party deliberately misses a deadline to gain advantage. (See e.g., *Venice Baking*
9 *Co. v. Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533 where relief was denied because
10 counsel purposefully chose not to oppose a motion as a litigation tactic). Here the delay was
11 inadvertent and the movant's lack of understanding of the claims process after a trust fund had
12 already been established to satisfy the claim.

13 And, finally, the likelihood of injustice is great, if this claim is not permitted. Elizabeth
14 Costa is a Camp Fire victim whose primary avenue for compensation is through this bankruptcy.

15 **V.**

16 **CONCLUSION**

17 For the reasons set forth above, Movant respectfully requests that this Court enter an
18 Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

19 1. Granting the Motion;
20 2. Finding that the Movant be allowed to file a Proof of Claim and deem it as if having
21 been timely filed;
22 3. Granting such other or further relief as the Court deems just and proper.

23 Dated: April 28, 2022

24 Respectfully submitted,

25 THE KANE LAW FIRM

26
27 By: _____/s/
28 BONNIE E. KANE
Attorneys for Elizabeth Costa